

Guardianship Mythbusters

Iowa Health Home Learning
Collaborative

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About the Office of Public Guardian



Guardianship and
conservatorship
services of last
resort



Information and
referral to the public
about guardianship,
conservatorship,
and alternatives



Training and
education for
guardians and
conservators

Guardianship Basics

Guardianship and Conservatorship

- Guardians and conservators are appointed by the court to make decisions for someone else
- A guardian or conservator is only appointed for a person who is unable to make or communicate their own decisions
- A person who has a guardian or conservator appointed for them is called a “protected person”

Guardians & Conservators

Guardian: someone appointed by the court to make decisions about the protected person's **physical care**



Conservator: someone appointed by the court to make decisions about the protected person's **property and finances**



Legal Standard for Guardianship

A person whose **decision-making capacity is so impaired** that they are unable to care for their personal safety or to provide for their basic necessities, such as food, shelter, clothing, or medical care, without which physical injury or illness might occur.

Legal Standard for Conservatorship

A person whose **decision-making capacity is so impaired** that they are unable to make, communicate, or carry out important decisions concerning the person's financial affairs.

Before Considering Guardianship or Conservatorship

Does the person meet the legal standard?

- Significantly impaired decision-making capacity

Consider any and all less restrictive alternatives

- Informal supports
- Representative payee
- Supported decision-making
- Power of attorney
- Limited guardianship or conservatorship

Is the potential guardian or conservator prepared for the responsibility?

- Long-term responsibility
- Duties to protected person
- Duties to the court

Myth #1

Most adults with disabilities need a guardian.

Most adults with disabilities **do not** need a guardian!

- There is a legal standard that the courts use to decide whether a person needs a guardian or conservator
- The legal standard looks at the person's decision-making capacity and other types of available support
- Guardianship limits a person's rights, so it should only be used when no other option will work.

Myth #2

Parents of children with disabilities need to file for guardianship when their child turns 18.

Most young adults with disabilities are capable of making decisions.

- There are other ways for parents to remain involved with their child's care without guardianship.
- Families should try less restrictive alternatives before filing for guardianship.



Myth #3

When an older adult is diagnosed with dementia, they need a guardian or conservator.

Dementia does not automatically mean a person needs a guardian.

- Different types of dementia affect people differently.
- Older adults who are diagnosed with dementia can still make many types of decisions.
- Older adults in the early stages of dementia should take advantage of planning tools.

Myth #4

Guardianship will protect a person from making bad decisions.

This one is a double myth!

- Adults have the right to make their own decisions – including bad decisions!
- A guardian cannot force someone to
 - Eat healthy foods or exercise
 - Take their medications
 - Cooperate with service providers
- A guardian cannot stop
 - Aggressive, violent, or self-harming behavior
 - Taking things that belong to others
 - Consensual sexual activity
 - Staying up late, sleeping late, skipping work or school, etc.
 - Smoking, alcohol use, drug use

Myth #5

A conservatorship is necessary if a person is unable to manage their finances.

There are a variety of tools to help people manage their finances.

- Money management tools
 - Bill payer services
 - Debit cards (pre-paid, spending controls)
 - Joint bank accounts – proceed with caution!
 - Representative payee
 - Power of attorney
- Financial planning tools
 - PASS Plan
 - ABLE Act accounts
 - Special Needs Trusts
 - Miller Trusts



Myth #6

A guardianship is necessary if a person is unable to make medical decisions.

There are a variety of tools to help people with medical decisions.

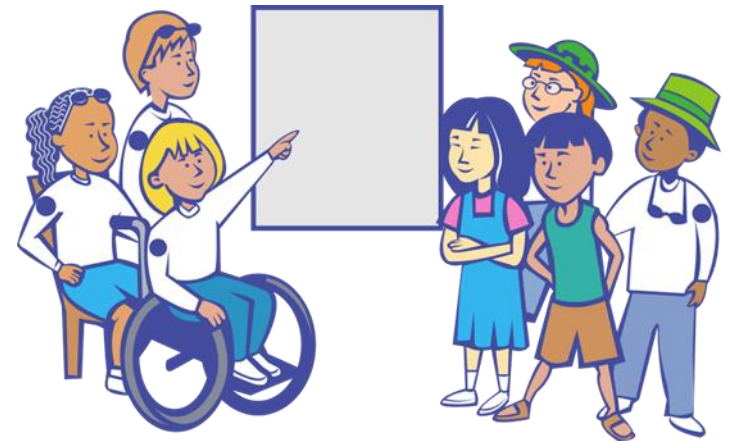
- Supported Decision-Making
 - People chosen by the patient to help them understand information, communicate with their providers, and make treatment decisions
- Release of Information
 - Gives medical providers permission to share information and medical records with people or organizations
- Durable Healthcare Power of Attorney
 - Names a person who the patient wants to make medical decisions for them if they are unable
- Declaration Regarding Life-sustaining Procedures (“Living Will”)
 - Expresses the patient’s wishes regarding life-sustaining procedures if they have a terminal condition or are in a persistent vegetative state

Myth #6

A guardianship is necessary if a person is unable to make other kinds of decisions.

Ways to support a person in making decisions about their life.

- Supported Decision-Making
 - People chosen by the person to help them understand information, make decisions, and communicate those decisions to others.
- Release of Information
 - A person can give permission to have information released to people who are supporting them
- “Appointed Representative”
 - Many government agencies let an applicant or beneficiary name someone to help them with the process. (Social Security, Medicaid, IRS and Iowa Dept. of Revenue, unemployment insurance, etc.)



Myth #7

**A person who has a guardian will
always need a guardian.**

Guardianships can be changed or ended.

- Many people who have guardians can develop or regain the ability to make decisions.
- Guardianships can be limited or expanded as the protected person's needs change
- Guardians have a responsibility to help the protect person become self-reliant.
 - A guardian involves the protected person to the greatest extent possible in all decision-making.
 - A guardian maximizes the self-reliance and independence of the protected person.

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